SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK
Justice

PART 39

United Feder

- v -

Merrill Lynch

INDEX NO. 106102/09

MOTION DATE

MOTION SEQ. NO. 01

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/10/11

BARBARA R. KAPNICK J.S.C.
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

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UNITED FIBER SYSTEM LTD.,

Plaintiff,

-against-

MERRILL LYNCH & CO., INC. and
MERRILL LYNCH (SINGAPORE) PTE LTD.,

Defendants.

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DECISION/ORDER
Index No. 106102/09
Motion Seq. No. 001

BARBARA R. KAPNICK, J.:

In this action, plaintiff United Fiber System Ltd. ("UFS"), an entity created under the laws of Singapore with its principal place of business in Singapore, seeks to recover damages against defendants Merrill Lynch & Co., Inc. ("MLCI"), a Delaware corporation with its principal place of business in New York, and its foreign subsidiary, Merrill Lynch (Singapore) PTE Ltd. ("MLS") [collectively, "Merrill Lynch"] for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) negligent misrepresentation; (4) fraud and fraudulent inducement; and (5) tortious interference with contract, which is only pled against MLCI.

Background

Plaintiff UFS is a Singapore company engaged in the pulp mill industry, whereby trees are processed into paper products. In 2005, UFS sought to acquire PT Kiani Kertas ("PT KK"), an

Indonesian paper mill operator. Originally, Deutsche Bank ("DB") was under a mandate with UFS to act as the financial advisor and sole arranger for the acquisition of PT KK. Towards the end of 2005, however, DB withdrew from its mandate allegedly due to mounting pressure from Non-Governmental Organizations ("NGOs").

Plaintiff alleges that Merrill Lynch previously sought to raise financing for the PT KK deal and expressed interest in replacing DB as arranger for the PT KK acquisition. MLS representatives, including Christopher Clower ("Clower"), an MLS Director who was handling the PT KK acquisition, Roger Suyama and Soofian Zuberi, allegedly met with UFS representatives to discuss a potential mandate agreement. Plaintiff claims that it advised the MLS representatives of the NGO issues that caused DB to withdraw, and specifically noted that the next arranger of finance could not withdraw due to NGO pressure.

According to the Complaint, "Merrill Lynch representatives confirmed: (1) they consulted with MLCI in New York and received the necessary approval of MLCI to arrange financing for the PT KK acquisition; and (2) a mandate would not be terminated due to NGO pressure."[1]

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[1] Compl. ¶ 13.

Plaintiff claims that in reliance on Merrill Lynch's assurances that a mandate agreement would not be terminated due to NGO pressure, UFS entered into a letter Agreement with Merrill Lynch dated January 21, 2006 (the "Mandate Agreement").

The Mandate Agreement provided that MLS would serve as "Sole Arranger" for the prospective acquisition financing. MLS agreed to use its "best endeavors to close [the acquisition of PT KK] expeditiously," and agreed that the Mandate Agreement could only be terminated "at any time after the date which is six months from the date of this letter [January 21, 2006]." The Mandate Agreement also stated that MLS could "provide [its] services through, or in conjunction with, one or more of its affiliates, and 'Merrill Lynch' as used [t]herein [] include[d] any such affiliates." The Mandate Agreement was signed by Kishore Dass, CEO and Executive Director of UFS and Clower.

Clower thereafter allegedly advised UFS that MLS was getting pressure from MLCI in New York regarding the acquisition. According to plaintiff, Clower wanted to meet with Fred Krupp, President of the Environmental Defense Fund in New York, to gain support for the deal and to satisfy certain concerns of MLCI. Plaintiff claims that Clower represented that MLCI in New York asserted control over MLS in many respects, and that Clower was in

frequent contact with MLCI representatives regarding the PT KK deal.

According to the sworn declaration executed on January 9, 2009 by Jaka Prasetya ("Prasetya"), who is the Chief Executive Officer of UFS and was previously employed by Deutsche Bank in Singapore, most recently as the Director and the Head of Country Banking for Indonesia, a meeting agenda that was distributed by Clower states in pertinent part that "Merrill Lynch senior management in Asia and New York wants to ensure that, by taking on this project, Merrill Lynch will not suffer significant reputational damage from the same sort of NGO campaign that caused Deutsche Bank to drop the mandate." Plaintiff alleges that this agenda demonstrates MLCI's coordination, involvement and control of the PT KK deal.

Clower allegedly told UFS that Merrill Lynch needed to retain an environmental consultant to evaluate environmental issues for purposes of a presentation to MLCI in New York. Plaintiff claims that the consultant's report concluded that no environmental issues would impede the deal.

According to plaintiff, there were more meetings involving UFS and Merrill Lynch representatives, at least one of which involved a MLCI representative from New York. At one meeting, Clower

allegedly instructed UFS representatives that they would need to travel to New York to make a presentation to MLCI decision-makers. Plaintiff claims that Clower noted that going to New York was a normal part of the MLS process for deals like the PT KK acquisition.

By letter dated May 29, 2006 (the "Termination Letter"), MLS terminated the Mandate Agreement, pursuant to a discussion "between Merrill Lynch and [UFS] on May 24, 2006." Plaintiff claims that the termination was premature and improper because, under the terms of the Mandate Agreement, it could not be terminated prior to July 21, 2006.

Plaintiff also claims that Merrill Lynch's improper termination and the resulting absence of an arranger prevented the prospective acquisition from closing, notwithstanding the continued support of the ultimate investors. When UFS was later able to secure a replacement arranger, PT KK was allegedly no longer willing to move forward with the deal. Plaintiff further claims that when news of Merrill Lynch's termination of the Mandate Agreement became public, UFS' stock price crashed.

Defendants now move for an order pursuant to CPLR 3211, 3013, 3016 and 326 dismissing the Complaint on the grounds that: (1) the

Complaint, as pled against MLCI, fails to state a claim; (2) Singapore is a more convenient forum for the claims against MLS; and (3) MLS is not subject to personal jurisdiction in New York.

Discussion

It is well settled that in determining a motion to dismiss, "the complaint should be liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference." *Rivietz v. Wolohojian*, 38 AD3d 301 (1st Dep't 2007).

> In determining such a motion, the court may freely consider additional facts contained in affidavits submitted by the plaintiff to remedy any defects in the complaint. (citation omitted). The allegations in the complaint, and in any supporting affidavits, must be taken as true, and the plaintiff must be accorded the benefit of every possible favorable inference (citations omitted).

Sheridan v. Carter, 48 AD3d 444, 445 (2d Dep't 2008).

I. Motion to Dismiss Claims Against MLS

Defendants move to dismiss the instant Complaint, insofar as it is pled against MLS, based on *forum non conveniens* and a lack of personal jurisdiction. This Court will address the latter argument first.[2]

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[2] Since the doctrine of *forum non conveniens* "presumes that the court may exercise in personam jurisdiction over the parties," *Sarfaty v. Rainbow Helicopters, Inc.*, 221 AD2d 618, 619

A. *Lack of Personal Jurisdiction*

Defendants argue that the Complaint against MLS should be dismissed for lack of personal jurisdiction, on the grounds that: (1) MLS' alleged contacts with New York are insufficient to establish long-arm jurisdiction; and (2) MLCI's purported control over MLS does not establish general jurisdiction.

Plaintiff maintains that there is a sufficient basis to assert general jurisdiction over MLS, pursuant to an agency or "mere department" theory. Plaintiff further argues that courts also consider the "center of gravity" of a transaction and thus that this Court should take into consideration that: (1) MLCI imposes its operational policies to dictate the manner in which its subsidiaries, including MLS, conduct business; (2) MLS is financially dependent on MLCI; (3) MLS and MLCI may maintain consolidated financial books; (4) MLCI controls hiring/compensation decisions at MLS; (5) MLCI exerts controls over many phases of MLS' deals; and (6) MLS and MLCI coordinate marketing and solicitation of investors.[3]

(2d Dep't 1995), "New York courts traditionally have required that objections based on lack of in personam jurisdiction be resolved before issues of *forum non conveniens* are addressed." Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C327:5; *see also Edelman v. Taittinger, S.A.*, 298 AD2d 301, 303 (1st Dep't 2002).

[3] Alternatively, plaintiff requests leave to amend its Complaint to cure any deficiencies, to the extent the Court

Defendants argue in reply that MLCI's influence over MLS does not establish general jurisdiction, i.e., plaintiff cannot demonstrate that MLS is a 'mere department' of the parent company.

Generally under New York law, a "foreign corporation is amenable to suit in New York Courts under CPLR 301 if it has engaged in such a continuous and systematic course of 'doing business' here that a finding of its 'presence' in this jurisdiction is warranted (citation omitted)." *Landoil Resources Corp. v. Alexander & Alexander Servs.*, 77 NY2d 28, 33 (1990).

"[U]nder New York law, jurisdiction may be obtained over a foreign company . . . if the relationship between the foreign corporation and [a] local one gives rise to the valid inference of an agency relationship (citation omitted)." *Irwin v. ZDF Enters. GMBH*, 2006 WL 374960 at *8 (SDNY Feb. 16, 2006).

The Second Circuit has held that "for New York courts to have personal jurisdiction [over a foreign parent], the [local] subsidiary must be either an 'agent' or a 'mere department' of the

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concludes that there are such deficiencies.

foreign parent." *Jazini v. Nissan Motor Co.*, 148 F3d 181, 184 (2d Cir. 1998).[4]

> In making the determination of whether a foreign subsidiary may be imputed with the acts of its parent(s), courts must consider four factors:(1) common ownership; (2) the subsidiary's financial dependency on the parent; (3) "the degree to which the parent corporation interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities"; and (4) the degree of control exercised by the parent.

Irwin v. ZDF Enters. GMBH, *supra* at *8 (quoting *Jazini v. Nissan Motor Co.*, *supra* at 185).

In the instant case, the Complaint generally alleges that MLS' contacts with this forum are sufficient to confer general jurisdiction, but fails to specifically allege that defendant MLS continuously and systematically conducted business in New York. Moreover, there are only bare allegations in the Complaint to support the determination that MLS is an agent or mere department of MLCI. Plaintiff does, however, put forth the declarations of

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[4] It is important to note that although many cases contemplate a showing of agency for jurisdictional purposes based on a relationship between foreign parent and New York subsidiary, "[t]he same rule applies to the converse situation, when a plaintiff seeks to assert personal jurisdiction over a foreign subsidiary based upon the presence of its parent." *ESI, Inc. v. Coastal Corp.*, 61 FSupp2d 35, 51 (SDNY 1999) (applying New York law).

Wisangenni Lauw ("Lauw")[5] and Prasetya, in support of its argument that MLS is subject to general jurisdiction based on its parent-subsidiary (agency) relationship with MLCI.

The Appellate Division, First Department, has held that "[w]hile a showing of agency for jurisdictional purposes will not be inferred from the mere existence of a parent-subsidiary relationship," plaintiffs who make a "'sufficient start' (citation omitted) in demonstrating that defendants . . . were doing business in New York through their direct or indirect subsidiaries and [were] thus 'present' in the jurisdiction so as to furnish a jurisdictional predicate pursuant to CPLR 301, . . . should be allowed to learn whether the complex corporate relationships involved the parents' exercise of control over their subsidiaries." *Edelman v. Taittinger, S.A., supra* at 302.

Here, this Court finds that the plaintiff has at least made a "sufficient start" in showing that facts may exist, regarding MLS' and MLCI's parent-subsidiary relationship, which would allow this Court to exercise personal jurisdiction over MLS. Therefore, this Court finds that plaintiff should be allowed to conduct limited jurisdictional discovery on this issue.

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[5] Lauw is the Chief Executive Officer of Kingsclere Finance Ltd., which is the company that presented the prospective acquisition of PT KK to UFS.

With respect to whether MLS' alleged contacts with New York are sufficient to establish jurisdiction pursuant to CPLR 302, plaintiff argues that there is a sufficient basis to exercise long-arm jurisdiction over MLS on the grounds that it: (1) transacts business within the State of New York, or (2) committed a tortious act within the state.

Plaintiff bases its assertions on the sworn Declaration of Lauw, who states that "Clower told me that he was directed to terminate the Mandate Agreement by MLCI in New York" and that "he was in frequent contact with representatives of MLCI in New York addressing various issues respecting the [PT KK] deal."

Plaintiff also argues that long-arm jurisdiction is appropriate here based on the fact that there were potential meetings that may have occurred in New York.

Defendants argue that MLS' alleged contacts with New York are insufficient to establish specific jurisdiction, since Singapore is where the instant contract was negotiated and signed, where the communications between UFS and MLS occurred, and where both signatories are located. In addition, defendants contend that no "planned" meetings in New York ever occurred; i.e., the only actual meeting with an NGO, which was attended by UFS, occurred in

Indonesia, and the Mandate Agreement was terminated before any meeting in New York ever occurred.

Based on the papers submitted, this Court declines to exercise personal jurisdiction pursuant to New York's long-arm statute, i.e. CPLR 302(a)(1) or (2), finding that plaintiff has failed to allege that defendant MLS, in person or through an agent, either: (1) transacted any business within the state or contracted anywhere to supply goods or services in the state; or (2) committed a tortious act within the state.[6]

B. Forum Non Conveniens

Defendants next argue that Singapore is a more convenient forum for the claims against MLS because: (1) the causes of action against MLS arose in Singapore; (2) UFS and MLS are both residents of Singapore; (3) the Court would be unduly burdened if the claims against MLS were to proceed here, since the Mandate Agreement provides that it is to be "governed by, construed and interpreted in accordance with, the laws of Singapore;" (4) MLS would be burdened by having to bring witnesses and documents to New York; and (5) the Mandate Agreement specifically provides that "[a]ll

[6] There is also no basis to permit discovery on this issue, since there has not been a "sufficient start" by plaintiff in demonstrating that MLS transacted any business in New York or committed a tortious act here.

actions and proceedings arising out of or relating to this letter agreement may be heard and determined in the Singapore courts to whose non-exclusive jurisdiction the Company [i.e., UFS] hereby irrevocably submits."

Plaintiff, however, argues that: (1) the primary action in the case arose out of MLCI's involvement and directive to MLS to terminate the Mandate Agreement; (2) MLCI had to grant the necessary approval to arrange financing for the PT KK acquisition; (3) MLCI confirmed that the Mandate Agreement would not be terminated as a result of NGO pressure; (4) there were meetings between UFS and Merrill Lynch representatives, at least one of which involved a MLCI representative from New York; (5) UFS was directed to travel to New York to make a presentation to MLCI decision makers; (6) UFS was advised that going to New York was a normal part of the process on such deals; and (7) Clower was allegedly directed to terminate the Mandate Agreement by MLCI in New York.

According to *Edelman v. Taittinger, S.A., supra* at 303, when the Court is faced with "an unresolved jurisdictional question awaiting discovery . . . th[e] Court may not reach the issue of whether dismissal should be based on forum non conveniens."

In the instant case, since discovery is needed to determine whether this Court has personal jurisdiction over MLS, the Court will not reach the issue of *forum non conveniens* at this stage.

II. Motion to Dismiss Claims against MLCI

A. Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing

Defendants argue that the breach of contract claim against MLCI must be dismissed against it because MLCI was not a party or signatory to the Mandate Agreement.

Plaintiff argues in opposition that the contract-based claims are properly asserted against MLCI since the Mandate Agreement specifically states that the offering will be subject to, *inter alia,* "receipt of Merrill Lynch's final internal approval." Plaintiff also urges that "internal approval" refers to MLCI and that the overall language of the Mandate Agreement supports "an affiliation argument under which MLCI can be tied to the Agreement."

"It is well established that, generally, a party who is not a signatory to a contract cannot be held liable for breaches of that contract." *MBIA Ins. Corp. v. Royal Bank of Canada,* 706 FSupp2d 380, 396 (SDNY 2009) (applying New York law).

Some exceptions to this general rule, however, have been recognized by the New York courts. In *Horsehead Indus. v. Metallgesellschaft AG*, 239 AD2d 171, 171-172 (1st Dep't 1997), the First Department recognized the intent to be bound exception and held that a non-signatory parent corporation

> can be held liable as a party to its subsidiary's contract if the parent's conduct manifests an intent to be bound by the contract, which intent is inferable from the parent's participation in the negotiation of the contract, or if the subsidiary is a dummy for the parent, or if the subsidiary is controlled by the parent for the parent's own purposes(citation omitted).

See also MBIA Ins. Corp. v. Royal Bank of Canada, supra at 396.

In addition to the intent to be bound theory, New York courts have also recognized that a non-signatory can be held liable under an alter ego doctrine. *See RUS, Inc. v. Bay Industries, Inc.*, 2004 WL 1240578 at *20-21 (SDNY May 25, 2004).

Here, while it is undisputed that MLCI is not a signatory to the Mandate Agreement, taking the allegations in the Complaint and supporting documents as true and considering the alternative theories under which a non-signatory may be held liable under a

contract, the Court finds that it is premature to dismiss the breach of contract claim against MLCI.[7]

With respect to the second cause of action for breach of the implied covenant of good faith and fair dealing, however, this claim is "dismissed as duplicative of the breach of contract claim because both claims arise from the same facts." *Logan Advisors, LLC. v. Patriarch Partners, LLC*, 63 AD3d 440,467 (1st Dep't 2009).

B. Negligent Misrepresentation, Fraud and Fraudulent Inducement

The third and fourth causes of action both allege that Merrill Lynch represented to UFS that "Merrill Lynch would not succumb to pressures asserted by NGOs."[8] In the third cause of action, UFS alleges that UFS "would never have entered into the Mandate Agreement with Defendants if it knew Defendants would fold under pressure from NGOs and walk away from the deal."[9]

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[7] The Court also notes that plaintiff made the additional argument for the first time on the record on February 19, 2010, that there was an oral contract between UFS and MLCI that MLCI would not back down to NGO pressure. However, this allegation is not pled in the Complaint and thus this Court will not address this argument.

[8] Compl. ¶¶ 30, 39.

[9] Compl. ¶ 32.

The Appellate Division, First Department has held that "[a] claim for negligent misrepresentation can only stand where there is a special relationship of trust or confidence, which creates a duty for one party to impart correct information to another, the information given was false, and there was reasonable reliance upon the information given (citations omitted)." *Hudson River Club v. Consol. Edison Co.*, 275 AD2d 218, 220 (1st Dep't 2000); *see also Atkins Nutritionals v. Ernst & Young*, 301 AD2d 547, 548 (2d Dep't 2003) (holding that "[t]he lack of a special relationship distinct from and independent of the contract . . . precludes [a] cause of action [that seeks] to recover damages for negligent misrepresentation"). Defendants argue that plaintiff cannot state a claim for negligent misrepresentation, since plaintiff does not allege the requisite "special relationship." Plaintiff does not specifically address this argument in its opposition papers.

There is nothing in the instant Complaint to suggest that UFS had a special relationship with MLCI, or MLS for that matter. In fact, the Mandate Agreement expressly provides that "nothing in this letter agreement or the nature of the services shall be deemed to create a fiduciary or agency relationship between Merrill Lynch and [UFS]." Accordingly, plaintiff has failed to state a claim for negligent misrepresentation and the third cause of action is dismissed.

The fourth cause of action for fraud and fraudulent inducement is also based on the alleged representation by Merrill Lynch that it would not succumb to NGO pressure.

Defendants argue that this cause of action also fails because it does not satisfy the heightened pleading requirements of CPLR 3016.

Plaintiff argues in opposition that it alleged proper claims for fraud and fraudulent inducement because "at the time Defendants attempted to secure the Mandate Agreement with Plaintiff, MLCI had no intention of (1) dealing with potentially bad press from NGOs; (2) using its best efforts to complete the deal quickly; and (3) pursuing the deal for the requisite six months."

The Appellate Division, First Department, has held that actions for fraud and fraudulent inducement "were properly dismissed because they do not allege an intentional misrepresentation of any material existing facts (citation omitted), but only 'statements of prediction or expectation.'" *Pacnet Network Ltd. v. KDDI Corp.*,78 AD3d 478 at*1 (1st Dep't 2010) (quoting *Naturopathic Labs. Int'l, Inc. v. SSL Ams., Inc.*, 18 AD3d 404 [1st Dep't 2005]). Additionally, CPLR 3016(b) provides that "[w]here a cause of action . . . is based upon misrepresentation,

[or] fraud . . . the circumstances constituting the wrong shall be stated in detail."

Here, UFS' fraud and fraudulent inducement allegations are not pled with sufficient detail. The Complaint fails to allege who made these statements, when they were made or any specific details concerning the circumstances in which the statements were made. Moreover, the statements are not actionable, because, even if taken as true, they did not pertain to material facts existing at the time the Mandate Agreement was entered into, but rather were statements concerning a *prediction* that Merrill Lynch would not succumb to NGO pressure. Accordingly the fourth cause of action is dismissed.

C. Tortious Interference with Contract

Plaintiff argues that if MLCI is not found to be a party or bound by the Mandate Agreement, it still may be held liable for tortious interference with contract.

In New York, "[t]ortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third party's breach of contract without justification, actual breach and damages." *Vigoda v. DCA*

Prods. Plus, 293 AD2d 265, 266 (1st Dep't 2002) (citing *Lama Holding Co. V. Smith Barney*, 88 NY2d 413 [1996]).

Plaintiff's fifth cause of action alleges that: (1) there was a valid Mandate Agreement between UFS and MLS; (2) MLCI had full knowledge of the Mandate Agreement; (3) MLCI engaged in intentional conduct that caused MLS to terminate and breach the Mandate Agreement; and (4) UFS suffered damages as a direct and proximate result of MLCI's tortious interference with contract.

Defendants first contend that plaintiff must plead nonconclusory facts establishing that the alleged third party tortfeasor acted exclusively with malice, or by illegal means. However,

> . . . a plaintiff is not required to plead malicious intent under New York law to properly state a claim for tortious interference with contract (*see Shared Communications Servs. of ESR, Inc. v. Goldman Sachs & Co.*, 23 AD3d 162, 163 . . . [1st Dep't 2005] [the tort of tortious interference with prospective business relations requires pleading malice, but the tort of interference with contract does not]) or special damages. Under New York law, a plaintiff must merely plead intent to induce a breach of contract without economic justification that causes damage (citation omitted).

Reid v. Ernst & Young Global Ltd., 13 Misc.3d 1242(A) at *5 (Sup Ct, NY Co Nov. 15, 2006).

Next, defendants argue that the plaintiff's own allegations establish that MLCI's purported interference with the UFS contract was to avoid significant reputational damage and that this establishes an economic interest defense to the tortious interference cause of action. *See, e.g., Levine v. Yokell*, 258 AD2d 296 (1st Dep't 1999).

Plaintiff responds that at the motion to dismiss stage, it is premature for the Court to consider defendants' defense to plaintiff's claim for tortious interference with contract.

According the pleading the benefit of every possible favorable inference, this Court denies defendants' motion to dismiss with respect to the fifth cause of action for tortious interference with contract, as plaintiff has met its initial burden of stating a claim.

D. Causation and Damages

With respect to the claims against MLCI, defendants argue that plaintiff has not adequately alleged causation because plaintiff made "conclusory allegations of damages in the form of diminished share price, lost profits, and due diligence costs."

Plaintiff asserts that it is not required to produce all of its evidence as to damages in its Complaint, and that it has pled sufficient facts supporting the element of causation and damages on each of its claims. Plaintiff generally alleges that as a result of the premature termination of the Mandate Agreement, UFS experienced a sharp drop in its stock value, lost its deal with PT KK, and was unable to earn the profits it would otherwise have reaped had the acquisition of PT KK been consummated. Additionally, plaintiff claims that its damages include harm to its reputation in the industry and the funds it squandered on extensive due diligence expenditures with Merrill Lynch.

With respect to the tortious interference with contract claim, which is pled in the alternative, plaintiff has alleged that MLCI's interference was the cause of the breach. As discussed earlier, plaintiff has also asserted that the decision to terminate the Mandate Agreement was directed by MLCI in New York.

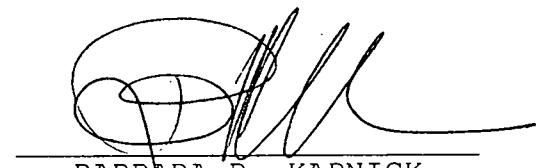
Accordingly, this Court finds that the causation and damages prongs of the first and fifth causes of action have been adequately pled.

The parties are directed to meet and confer as to the jurisdictional discovery directed herein and to appear for a

conference in IA Part 39, 60 Centre St. Room 208 on March 16, 2011 at 10:00 A.M.

This constitutes the Decision and Order of this Court.

Dated: Jan. 10, 2011



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